

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

JAMES PRESTON SMITH,

Petitioner,

v.

CIVIL ACTION NO. 5:16-cv-05060  
(Criminal No. 5:99-cr-00161)

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM OPINION AND ORDER**

On May 31, 2016, the Petitioner, through court-appointed counsel, filed a *Motion to Correct Sentence Under 28 U.S.C. § 2255* (Document 176), and a *Motion to Defer Ruling* (Document 177). By *Standing Order* (Document 182) entered on that date, the matter was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.

On June 19, 2018, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 204) wherein it is recommended that the Petitioner's *Motion to Correct Sentence Under 28 U.S.C. § 2255* (Document 176) be denied, that the Petitioner's *Motion to Defer Ruling* (Document 177) be denied as moot, and that this matter be removed from the Court's docket.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Petitioner's *Motion to Correct Sentence Under 28 U.S.C. § 2255* (Document 176) be **DENIED**, that the Petitioner's *Motion to Defer Ruling* (Document 177) be **DENIED AS MOOT**, and that this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Tinsley, counsel of record, and any unrepresented party.

ENTER: July 11, 2018

  
IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA